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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/693,239	10/20/2000	Herbert Howell Waddell	IP-902	8560

7590 08/28/2003

ALBERT WAI-KIT CHAN
WORLD PLAZA, SUITE 604
141-07 20TH AVENUE
WHITESTONE, NY 11357

EXAMINER

PEZZUTO, ROBERT ERIC

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 08/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/693,239

Applicant(s)

WADDELL, HERBERT HOWELL

Examiner

Robert E Pezzuto

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Note to the attorney of record: The Office Action dated January 8, 2003 was not an answer to the appeal brief filed October 22, 2002 but rather to reopen prosecution of the application on the merits in light of new art.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis '359 in view of Decker '645. Jones discloses an apparatus for gathering materials (figures 1-4), the apparatus comprising two grasping elements (A,A') each which have shafts (F) with grasping means (B,B') at one end. Also, Jones shows the shafts being of 0.5 to 3 inches in diameter and two to six feet in length (as seen in figures 1-3) and the grasping means having tines (as best seen in figure 1). Further, Davis teaches that it is well known in the art to connect to implements (figures 1-3) with a relatively moveable coupling means (figure 4), the handles being turnable within the coupling means when moved to the non-square portions of the handles (as seen in figures 1-3)

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but fails to show the coupling means made of a flexible material. However, Decker clearly teaches that it is known in the art to provide a hinged coupling means between two handles of such an implement (figures 1-3) and to construct that coupling means from a flexible material (column 2, lines 27-40). It would have been obvious to one having ordinary skill in the art to provide the apparatus of Davis with the teachings of Decker in order to provide a material gathering apparatus with a greater operational range.

In response to the applicant's arguments is the following: The Davis patent, as well as many other pieces of cited art, show and teach that it is very well known and common to attach two similar earth working tools together (shovels in Davis, rakes in Jones, etc) in order to grasp material between the tools. Davis further shows and teaches to use a metal, moveable hinge type device between the two tools to make such attachment. The Decker reference's sole use was to display that it is very obvious to make such a hinge from an elastomer material such as rubber. The attorney states that the Davis reference is more than 180 years old and should bear on obvious modification. This point is well taken by the examiner who strongly believes that if such a device was manufactured today, it would be of the elastomer material as taught by Decker if for no other reasons then cost and ease of manufacture. Cited for the applicant's examination are more recent patents that disclose devices employed to joint two cylindrical objects. The material of choice for these connectors again being an elastomer/plastic material.

Applicant's arguments filed January 31, 2003 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert E Pezzuto whose telephone number is (703) 308-1012. The examiner can normally be reached on 7:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B Will can be reached on (703) 308-3870. The fax phone numbers


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for the organization where this application or proceeding is assigned are (703) 308-8623 for regular communications and (703) 308-8623 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1212.



Robert E. Pezzuto
August 22, 2003